THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.15032 OF 2006

DATED 21.7.2006

BETWEEN:
Abdul Rawoof and others … petitioner.

And

Municipal Corporation of Hyd., … Respondent.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.15032 OF 2006

ORDER:

1. The writ petition is filed for a writ of mandamus or any other appropriate writ declaring that the action of the first respondent-Corporation in issuing notices dated 18.7.2006 directing demolition of the houses of the petitioner which are situated at Khilwath, Hyderabad on the ground that the houses of the petitioners are situated adjacent to Chowmohalla Palace, is arbitrary, illegal and ultra vires to the provisions of the Hyderabad Municipal Corporation Act, 1955 and consequently direct the respondents to forbear from demolishing any part of the house properties of the petitioners situated at Khilwath, Hyderabad and to grant such other appropriate relief.

2. Sri Vedula Venkataramana, the learned counsel representing the petitioners had pointed out to certain of the objections which had been filed and would maintain that without considering these objections, even prior thereto, the impugned order was made. The learned counsel also had drawn the attention of this Court to the prior order made by this Court wherein an opportunity was given to the petitioners to file additional objections and the direction was given to the second respondent to receive such objections within two weeks

and dispose of the same in accordance with law. The learned counsel also pointed out that in view of the fact that the order copy was received on 30.6.2006 certain of the petitioners had filed objections and those objections were not considered since the impugned order was made even by that time. The learned counsel also had drawn the attention of this Court to the prior order made and would point out that in the facts and circumstances of the case, it would be appropriate to direct the respondents to pass appropriate orders considering the objections also. The learned counsel also placed reliance on ***State of Gujarat Vs Patel Raghav Natha & Others***[1].

3. On the contrary, Sri Ghanta Rama Rao, the learned Standing Counsel had taken this Court through counter affidavit filed in detail and would maintain that no objections had been received though time was specified in the order and only some of the objections were sent by certain of the petitioners to the respondents on 19.7.2006 at about 3.30 P.M. The learned counsel also would submit that even otherwise, these are all unauthorized constructions since none of the petitioners had obtained any permission for construction of the houses.

4. Heard the counsel.

5. It is stated that similar orders had been passed in pursuance of the orders made by this Court in W.P.No.11585 of 2006 dated 27.6.2006 and the impugned notice reads as hereunder:

> " With reference to the above subject cited, it is to inform that the Hon'ble High Court passed orders that liberty is given to file additional objections also and the 2nd respondent to receive objections within a period of two weeks and dispose of the same in accordance with law. You have not filed any additional objections and the given time in the order has expired, in respect of demolition of the unauthorized constructions adjacent to Chowmohalla Palace, Khilwath, Hyderabad which is a declared heritage structure as per the orders of the Government.

You have unauthorisedly constructed Cellar Grounds + 2 upper floors in Pr.No.20.4.214/19 adjacent to Chowmohalla palace situated at Khilwath, Hyderabad.

You are therefore directed to remove the unauthorized constructions made at the site under reference in cellar Grounds + 2 upper floor with in three days failing which further necessary action will be initiated as per the provisions of the HMC Act 1955."

6. It is stated by the petitioners that they are absolute owners and possessors of residential houses at Himmatpura, Khilwat, Motigally, Hyderabad and they constructed the houses long ago and are residing in the said houses for all these years. It is also stated that the respondent-Corporation issued notice dated 21.4.2006 under Section 636 of the Hyderabad Municipal Corporation Act, 1955 suggesting that their houses would be demolished within 24 hours and hence petitioners filed W.P.No.11585 of 2006 and the writ petition was disposed of by this Court on 27.6.2006 and the operative portion is as hereunder:

" It is not in controversy that the 2nd respondent issued notices to the petitioners under Section 636 of the Hyderabad Municipal Corporation Act 1955 without issuing any notice under Section 452 of the Act. It is needless to say that similar matters were disposed of by this Court within appropriate directions and in view of the same, the present writ petition can be disposed of directing the 2nd respondent to treat the notices issued as show cause notices. It is also stated that certain objections had already been filed. If the petitioners are not satisfied with the objections already filed, further liberty is given to the petitioners to file additional objections also and the 2nd respondent to receive such objections within a period of two weeks and dispose of the same in accordance with law."

7. It is stated that the order impugned in the above writ petition dated 21.4.2006 is identical to each of the petitioner in substance and the same is as hereunder:

> " With reference to the above subject (unauthorized construction Ground + 2 upper floors in premises No.20-40214/19/1, Khilwath, Hyderbad), it is to inform that Content Case No.725 of 2005 was filed by Nawab Mir Barkat Ali Khan Bahadur @ Prince Mukaramm Jah Bahadur H.E.H. Nizam VIII of Hyderabad at Chowmohalla Palace Khilwath Hyderabad. You have unauthorizedly constructed Ground + 2 upper floors in Premises No.20-4-214/20 situated at Khilwath, Hyderabad in Nizam's property. You are, therefore, directed to remove the unauthorized constructions made at the site under reference in the Ground + 2 upper floors within 24 hours, failing which further necessary action will be initiated as per the provisions of the Hyderabad Municipal Corporation Act 1955."

8. It is also further stated that earlier notice dated 21.4.2006 had proceeded to suggest demolition of the houses on account of contempt case said to have been filed by Nawab mir Barkat Ali Khan Bahadur that they had constructed the houses in the property of Nizam. Thus the notice dated 21.4.2006 issued by the Corporation had not referred to the invalidity of the constructions but they based on the claim of H.E.H. the Nizam that in his property they constructed houses at Chowmohalla Palace, Khilwath, Hyderabad. It is submitted that after disposal of the W.P.No.11585 of 2006 they submitted objections on 14.7.2006 and 19.7.2006 through registered post acknowledgment due to the first respondent contending that they are absolute owners and possessors of the respective houses having purchased the same and constructions were made in the nature of additions after purchasing the same. The petitioners also denied that their houses are situated within Chowmohalla Palace and also contended that their houses are far away from the said palace and therefore, there is no justification in issuing notice of demolition of houses. It is also stated that without considering the objections, the first respondent passed the impugned notice under Section 636 of the Act dated 18.7.2006 to the

effect that they have unauthorisedly constructed houses adjacent to Chowmohalla palace situated at Khilwath, Hyderabad and therefore, the constructions to be demolished within three days as per the provisions of the Act. It is stated that the impugned notices are again in the nature of unilateral adjudication of so called invalidity attached to the constructions made by the petitioners in the respective premises. Several other factual details also had been narrated in para-6 of the affidavit filed in support of the writ petition.

9. The second respondent filed counter affidavit in detail denying the allegations and no doubt admitting the judicial proceedings. It is stated that it is a fact that previously notice under Section 636 of the Act was issued after issuance of notice under section 452 of the Act. It is further stated that Nawab Mir Barkat Ali Khan Bahadur represented through his Special Power of Attorney holder, filed W.P.No.943 of 2005 praying for writ of mandamus declaring the in action of the respondents in not initiating any action for preventing the illegal and unlawful constructions around Chowmohalla Palace situated at Municipal No.20-4-211 to 215, Khilwath, Hyderabad and for not taking appropriate necessary action for protecting the heritage structures etc. It was also stated that the said Writ Petition was disposed of with the direction to the Municipal Corporation of Hyderabad and Metro Water Works to consider the same and pass appropriate orders in accordance with law. It is also stated that after disposal of the said Writ Petition and after examining the entire issue, action was initiated against unauthorized constructions which came up around the Chowmohalla palace, notice under Section 452 was issued on 12.9.2005 and on 15.9.2005 and final notice was issued on 21.4.2006 after waiting for a long period.

10. The Municipal Corporation also had denied in para-5 of the

counter affidavit, the allegations that the earlier notices dated 21.4.2006 had proceeded to suggest demolition of their houses on account of contempt case said to have been filed by Nawab Mir Barkat Ali Khan Bahadur and that they had constructed houses in the property of HEH the Nizam and that the said notices were issued by the Corporation had not referred to the invalidity of the constructions but they had mentioned the claim of HEH the Nizam that in his property the petitioners constructed houses. It is submitted that it was clearly mentioned in the said notices that the respective petitioners had constructed the premises unauthorisedly and they were directed to remove the said unauthorized construction made by them in their respective premises. The allegations that after disposal of the W.P.No.11585 of 2006, the petitioners submitted objections on 14.7.2006 and on 19.7.2006 to the first respondent contending that they are the absolute owners and possessors of their respective houses having purchased the same through registered sale deeds and the constructions were made in the nature of additions, are denied. It is submitted that this Hon'ble Court while taking cognizance of the fact that the notices under Section 636 of the Act were issued by the 2nd respondent, had specifically directed the second respondent to receive the objections. It is also submitted that no objections were submitted by the petitioners till the date of issuance of the impugned notices, and only some of the petitioner's objections were sent to respondent-Corporation on 19.7.2006 at about 3.30 P.M.

11. It is also further submitted that the earlier notices were issued under Section 452 as well as 636 of the Act by the second respondent and this Hon'ble Court directed the second respondent to receive the additional objections, if any, while disposing of the W.P.No.11585 of 2006 and the present final notices were also issued by the second

respondent, having knowledge about all these facts, the petitioners deliberately appears to have sent some objections to the first respondent and presently contending that the first respondent had issued the present notice under Section 636 of the Act on 18.7.2006, wherein the impugned notices were issued by the second respondent. It is also submitted that admittedly the petitioners had undertaken the unauthorized constructed without obtaining any permission from the Municipal Corporation of Hyderabad, and sufficient opportunity was given to the petitioners to submit their objections by this Hon'ble Court and it is not open to the petitioners to contend at this stage that the first respondent had not issued any notices to them under Section 452 of the Act pointing out infirmities with regard to the construction and seeking their explanation. It is further stated that in all the earlier notices it was specifically mentioned that the premises in question are unauthorized constructions.

12. It is also further stated in the counter affidavit that the petitioners had been trying to prolong the matter instead of removing the unauthorized constructions undertaken by them after issuance of final notices under 636 of the Act. The allegation that the present impugned notice is not directly connected to any invalidity of constructions made by the petitioners, but it is on account of location of their houses adjacent to Chowmohalla Palace, is not correct. It is stated that it was specifically mentioned in all the notices that the respective premises are unauthorized constructions. It is also further stated that the respondent never directed demolition of the property on account of their location. It is further stated that whether the said unauthorized constructions are within the prohibited area or regulated area of an ancient monument or historical sites or heritage structures or not, it is always open to the Corporation to take action for removal of the same

after following the procedure under H.M.C. Act as long as they are the unauthorized constructions. It is also further stated that the present notices were issued after giving sufficient opportunity to the petitioners and the same are in conformity with the provisions of the H.M.C. Act and well settled principles of natural justice and the impugned notices were not issued with any ulterior motive as alleged by the petitioner and the ownership of the property is not relevant at this stage as the said constructions are made unauthorisedly without obtaining permission from the respondent-Corporation.

13. It is also further stated that when W.P.No.6583 of 2006 came up for hearing before Division Bench of this Court, this Court directed the Municipal Corporation of Hyderabad to submit a report as to the status of the unauthorized constructions around the Chowmohalla Palace basing upon the affidavit filed by the Chowmohalla Palace Trust and it was brought to the notice of the Hon'ble Court that the respondent Corporation had already initiated the action for removal of the unauthorized construction around the Chowmohalla Palace and the Hon'ble Court had recorded the same and directed the police to provide necessary protection to the Corporation for undertaking the demolition of the said unauthorized construction. Several other factual details also had been narrated.

14. Whatever may be the respective contentions of the parties, it is true that this Court while disposing of the prior W.P.No.11585 of 2006 had observed that if the petitioners are not satisfied with the objections already filed, further opportunity was given to the petitioner to file additional objections and the second respondent to receive such objections within two weeks and dispose of the same in accordance with law. It is no doubt true that the objections were not made within time, but however, the petitioners are coming up with an explanation

that inasmuch as only after receipt of the order of this Court, the objections were filed and certain objections were filed within time and certain objections were made just subsequent thereto. Strong reliance was placed on a decision of the Apex Court in ***Patel Raghav Natha's case*** (1 supra). This Court need not express any further opinion about the historical background of the litigation. However, from the series of events it appears it is a long drawn litigation. A battle is being fought by the petitioners on one hand and the Municipal Corporation on the other. However, it is brought to the notice of this Court that there are no approved sanctions at all and all these are unauthorized constructions. But however, certain other controversial questions also are being agitated. Be that as it may, though a bit late, additional objection as directed by this Court were submitted and in view of the same, taking into consideration the explanation submitted by the petitioner before this Court, this Court is inclined to give one more opportunity.

14. Accordingly, the impugned order is hereby set aside and the respondent – Municipal Corporation to take into consideration the objections which had been received and pass appropriate orders within two weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition is disposed of. No order as to costs.

21.7.2006.

Mdaa.

[1] AIR 1969 SC 1297